

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Billings Hotel and Convention Center - 1223 Muldowney Lane
Billings, MT 59101
SEPTEMBER 8, 2005

Commission Members Present: Steve Doherty, Chairman; Tim Mulligan, Vice-Chairman; John Brenden via teleconference phone; Shane Colton; Victor Workman.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director and FWP Staff

Guests: See September 8, 2005 Commission file folder.

Topics of Discussion:

1. Opening - Pledge of Allegiance
2. Approval of August 4, 2005 Commission Minutes
3. Approval of August 5, 2005 Commission Conference Call Minutes
4. Approval of Commission Expenses through August 31, 2005
5. Recognition Award to Harvey Nyberg for 26 Years of Service to FWP
6. 2006 Non-resident Combination License Annual Rule & Variable Priced Licensing – Tentative
7. Adoption of SB178 Aerial Herding Administrative Rules of Montana – Final
8. Future Fisheries Projects - July 2005 Funding Cycle – Final
9. Right-of-Way & Recreational Easement with Plum Creek Timber Company and the Bureau of Indian Affairs on Hubbard Reservoir – Informational
10. Cedar Creek In-Stream Flow Lease Renewal – Final
11. Deep Creek Property Acquisition within the Smith River Corridor – Endorsement
12. FWP Region 6 Facility Expansion in Glasgow – Endorsement
13. Mt. Haggin and Fleecer WMA – Duhamme Grant – Endorsement
14. Block Management Program Update – Informational
15. Thompson River Conservation Easement (Plum Creek) / Bultman Land Exchange – Endorsement
16. Grant of Easement to MT Dept. of Transportation from Ninepipe WMA near Ronan – Final
17. Swan Valley Conservation Easement – Endorsement
18. Blue-Eyed Nellie WMA - Acquisition of Long and Ternes Properties – Final
19. CSKT Waterfowl Regulations – Final
20. 2005-2006 Bison Hunting Regulations - Final
21. Public Opportunity to Address Issues Not Discussed at this Meeting

1. **Opening - Pledge of Allegiance.** Chairman Doherty called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

2. **Approval of August 4, 2005 Commission Minutes.** *Action: Colton moved and Workman seconded the motion to approve the minutes of the August 4, 2005 meeting.* Brenden stated that he would like the minutes to reflect that he takes exception to the Strategy as he feels it singles out ranchers as being responsible for the degradation of the environment. *Motion carried* with this addition to the minutes.

3. Approval of August 5, 2005 Commission Conference Call Minutes.

Action: Workman moved and Colton seconded the motion to approve the minutes of the August 5, 2005 conference call meeting. Motion carried.

4. Approval of Commission Expenses through August 31, 2005.

Action: Colton moved and Mulligan seconded the motion to approve the Commission expenses as presented. Motion carried.

5. Recognition Award to Harvey Nyberg for 26 Years of Service to FWP. (This was actually held later in the meeting between agenda items). Director Hagener acknowledged Harvey for his 26 years of dedicated service to FWP, and wished him well on his impending retirement. Hagener presented Nyberg with a beautiful framed plaque of a whitetail buck deer.

6. 2006 Non-resident Combination License Annual Rule & Variable Priced Licensing – Tentative. Hank Worsch, FWP Licensing Bureau Chief, stated that the Variable Priced Licensing Advisory Council, comprised of Commissioner Brenden, two sportsmen, and two outfitters, met August 19th to make fee recommendations for these licenses. A unanimous decision was reached by the Council to assess the following fees for the licenses:

B-10 Outfitter Sponsored Big Game Combination Licenses - \$995 – quota of 5,500

B-11 Outfitter Sponsored Deer Combination Licenses - \$795 – quota of 2,300

Outfitter Sponsored Elk Combination Licenses - \$895

As a result of HB214, a new addition to the annual rule this year is the B-13 Non-resident Youth Big Game Combination License that provides 300 non-resident children from 12 years of age and under 18 years of age to receive the big game combination license at one-half the regular combination license fee. The non-resident youth must be sponsored and accompanied by an immediate family member who has a valid resident deer or elk tag or a B-10 or B-11 license. The licenses are issued on a first come first served basis.

The rule also reflects the price increases for regular licenses in the general category, and includes the hunter enhancement fee.

Action: Workman moved and Mulligan seconded the motion to direct Fish, Wildlife & Parks to proceed with public comment on the tentative annual rule. Motion carried

7. Adoption of SB178 Aerial Herding Administrative Rules of Montana – Final. Jim Kropp, FWP Enforcement Division Administrator, explained that SB178, passed during the 2005 legislative session, provides authority for landowners, via a FWP permit, to use aircraft to herd, haze, or drive wildlife that are damaging private property or crops. This bill was necessary because under federal statute 16 USCS 742j-1, people are prohibited from using aircraft to harass any bird, fish, or other animal unless that person is “employed by or is an authorized agent of or is operating under a license or permit of any State or the United States...”. SB178 specifies that “the Commission shall adopt rules for the issuance of the permit”. The proposed rules address issues related to animal health and welfare, private property rights, liability (both civil and criminal), impacts affecting legal hunting activities, federal and state reporting requirements, and administrative processes for permit application, issuance, and revocation.

A public hearing was held July 20, 2005, and the comment period generated thirty-five comments. Following summarization of the comments, two amendments to the arm rules are now proposed. The first amendment is to New Rule Number V (ARM 12.6.2205) CONCURRENCE FROM AFFECTED PROPERTY HOLDERS. The amendment reads:

(d) locations of travel route(s) on the affected property holder's land, depicted on a topographical map, including the location(s) from which and to which animals may be moved...

The second amendment is to New Rule Number IV (ARM 12.6.2209) AERIAL HERDING LIABILITY. The words "or wild animals" were struck from the rule to avoid duplication, as this wording is already included in New Rule VIII.

Mulligan said that of the apprehensions expressed to him by the public, the greatest concern is the issue of crossing property boundaries while herding. He said that according to the statute, it appears that the intent was not to cross property boundaries. He would like to see the rules amended to state that permittees would not knowingly and intentionally push game across property boundaries. He strongly suggested that multiple landowners apply for permits as co-requestors so they would work together under one permit to push wildlife across their properties. Mulligan fears that unless notification to neighbors is made daily when a flight is to occur, problems will arise.

Hagener asked Mulligan if he meant that multiple landowners would need to be included on the permit itself. Mulligan said yes, that this would cover situations where two or three landowners want help moving wildlife across their property onto forest ground, or if landowners wanted to move animals across and onto private properties, then all parties would be on the permit. He does not feel the rules cover these situations.

Colton said he shares those same concerns. He does not think you can move onto someone else's land without written concurrence. Mulligan said it would be a lot cleaner if everyone involved is required to be on the permit. He feels smaller landowners will get taken advantage of, and will be misled as to how and when game can be moved. He feels liability issues such as downed fences will come into play. There is no guarantee where the animals will run to or where they will stop, leaving the potential for destruction of fences. Mulligan reiterated that all property owners that might be affected should be included on the permit as a co-requestor.

Kropp said the intent is to require written permission from adjacent landowners. He said conditions could be included on the permit to further clarify the terms of notification. He said it is not difficult to add landowners to the permit if they understand and are willing to accept the situation. Kropp said there are many scenarios that could occur, and by making the individual permits conditional, those concerns can be addressed.

Mulligan stated that significant changes would need to be made to the permits and to the language to accomplish that, including daily notification of any landowner whose property will be crossed, unless they are signatories on the permit. He fears many problems could develop in southwestern Montana triggering neighbor-to-neighbor conflicts and abuses. Mulligan said the intent and what actually happens on the ground may be entirely different.

Doherty asked if according to the suggested language, a landowner wished to move animals to public lands and the adjacent landowner refused permission, would the herding take place. Kropp said it would not, that landowners need permission – you cannot herd onto someone else's property without their permission.

Mulligan stated that without adding the language of “knowingly and intentionally”, it will happen. He said it will happen and FWP will get the calls after the fact. Kropp agreed that may happen, and it is a sensitive issue, so permission of other landowners could be included on the permit. Mulligan said that he was not talking about *permission*, but about *co-requestors* who are on the same level of request, all on an equal plane.

Brenden said he shares some of those same concerns, but this is not an easy rule. If it becomes too restrictive, nothing will be accomplished. He said by the time permission and documentation are gained from everyone, the crops will be destroyed by the wildlife in the fields. It requires give and take between neighbors. The perfect rule cannot be written for this situation.

Mulligan clarified that he does not oppose landowners moving animals within their own property as that only requires their own signature on the permit. The concept needs to be extended to whoever's property is affected, and not just as permission, but as a permit requestor. Then any animals moved will be on land owned by the landowners requesting the permit. And the rule needs language added that states that animals will not be knowingly or intentionally moved onto some other landowner's property.

Kropp said that Rule IV (2)(b) specifies that “written concurrence from affected property holders is required...” , but Mulligan is adding more stringent language for adjacent property owners and requiring them to be co-requestors on the permit.

Workman asked how often landowners would want permits “tomorrow morning”. Kropp replied that it is not often. Requests have to be approved in advance to assure proper documentation, and that the Department is properly following the intent of the airborne hunting act.

Mulligan said his concerns arose from public comments, and from looking at the statute. He read the statute. "87-3-126. *Restrictions on use of aircraft or boats* (4) *An aircraft or helicopter may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department. The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit. The department may not issue permits during any legal hunting season for the species for which a permit was requested. The permitting program must comply with requirements of federal law for such activity.*"

Mulligan said he thinks they would clearly be closer in alignment with the code and the public's concerns if the landowners were involved as co-requestors on the permits. He added that the rule also needs language that landowners will not knowingly and intentionally push animals onto another property owner's land. He then asked what the repercussions would be if that happens.

Kropp said that animals moved to the edge of a landowner's property will probably move onto other people's land or onto public land, and a penalty is not intended for that situation. There is more concern regarding landowners keeping the wildlife on their property prior to hunting season. Kropp asked Mulligan if an amendment to Rule IV(2)(b) that read "the signature of any affected property holders as co-requestors of the permit..." would address his concerns. Mulligan said it would address his concerns, but hopefully it would not affect any other language within the rule.

Doherty asked for public comment.

Dave Galt, representing Galt Ranch and Bill Galt, said he takes issue with making the person with adjoining land a co-requestor of the permit, as that puts that other landowner in the position of assuming all the same responsibilities as the person with the aircraft. He said he was involved with drafting the legislation, and there was never an intent to keep the animals on one person's property, and he feels that that intention shows clearly in the testimony given in both the Senate and House hearings.

Galt said they need to move the animals off a certain piece of their property where there are pivots and crops that can be damaged. The animals need to be moved to where they traditionally calved, and where they traditionally fed. If the rules are changed to address the concerns expressed today, he would ask that in the event there is a significant change in the rest of the rules that would eliminate the need for a lot of the requirements to the permits if they only move them on their own land. If they only move on their own land, the issuance of the permit should be simple.

Galt said another comment he had, which goes back to what they have said since day-one of their testimony before the legislature, and before the Commission, and throughout their work with the Department, relates to the issue of notification. This process works with cattle but will it work with wildlife. We don't know if it works with wildlife. FWP testified how, in their experience, it works with wildlife, and they think it will work. He said if you issue notification every time you want to put an aircraft in the air to move animals from Point A to Point B, it will not work. It will drive FWP crazy, and will cost the Galt Ranch money, and they will end up going back to using 4-wheelers as the law presently provides for. Galt said the issue of notification is of huge importance to them.

Galt summarized by saying he doesn't think having adjacent landowners as co-requestors will do what FWP wants. He feels to have all requestors assume the same responsibilities as the person with the aircraft isn't fair. He said it is two separate issues - you move them on your own land, or you move them across someone else's land. If they are moved on your own land, he would like to see the permit simplified - that would be in everyone's best interest.

Jay Bodner, MT Stockgrowers Association, expressed support for the two changes made to the rule. He was satisfied that landowners could say "no", and he was comfortable with the current language. He felt all issues were addressed, including damage situations.

Colton said Galt brought up a good point when he stated that adjacent landowners might be reluctant to assume liability. He understands Mulligan's concerns, but feels the rule is adequate as it is.

Kropp said the intent is to work with landowners on an individual basis, and to work with staff on the ground with the Galt Ranch. Permits are approved on an annual basis, and every time they are used, that use needs to be recorded. Mulligan said he agrees with Galt that on their own land, where it affects no other landowners, it is a simple process, but as long as other landowners are affected, he is not comfortable with this rule. He reiterated that the rule needs to state that "landowners will not knowingly and intentionally push game across property boundaries" Colton said if a landowner's property is damaged, the permittee is responsible whether it is knowingly or not.

Doherty said that there is a lot of trust for FWP to receive notification after the fact. Kropp said FWP would like to know in advance, and it is a requirement that they notify the Department. Doherty said that Mulligan's point is that there is the potential that this new law may create problems. Kropp said if a landowner wishes to revoke permission, that request will be honored.

Action: Colton moved and Workman seconded the motion to adopt the aerial herding Administrative Rule as proposed by the Department to implement SB178. Motion carried – three in favor - two opposed (Mulligan and Doherty).

8. Future Fisheries Projects - July 2005 Funding Cycle – Final. Glenn Phillips, FWP Fisheries Division Habitat Protection Bureau Chief, presented the future fisheries proposals. The projects funded by these monies are intended to restore fishery habitats that will enhance fish populations. Twice annually, the Future Fisheries Panel reviews applications, then forwards their recommendations to the Commission for approval.

Mulligan stated the projects look good, but raised the question of who will design the Darnutzer Slough project in Madison County. He asked if the Department would be in control to assure that spawning habitat is developed rather than fishing opportunity, and that the pools are not dug out. Phillips replied that the design will likely be developed by R. E. Miller of Dillon. He added that FWP will conduct inspections to assure the project is done the way the Department wants it done, but no problems are anticipated. He added that conditions can be added in if necessary.

Doherty asked if the future fisheries projects are all accessible to the public. Phillips said that the law does not require accessibility. However, our citizen review panel is keenly aware of the need for projects to benefit the public.

Action: Mulligan moved and Colton seconded the motion to approve the Future Fisheries Review Panel recommendations. Motion carried.

9. Right-of-Way & Recreational Easement with Plum Creek Timber Company and the Bureau of Indian Affairs on Hubbart Reservoir – Informational. Glenn Phillips, FWP Fisheries Division Habitat Protection Bureau Chief, explained that this 483-acre reservoir, located west of Kalispell, generates approximately 3000 angler days annually. It is a popular fishery for Kokanee Salmon and Rainbow Trout.

This proposal involves a road right-of-way, and two parcels of BIA lands adjacent to the reservoir. FWP would acquire from Plum Creek a four-mile right-of-way easement from a county road to Hubbart Reservoir, and two recreational sites from the BIA. There is no legal access to these sites, although Plum Creek has been informally allowing public access. Acquiring this easement would

guarantee public access and recreational use in perpetuity. There is no cost to the Department for the easements. FWP received five comments on the EA and were all in support of the proposal.

Workman asked if there would be maintenance costs. Phillips replied that there may be costs in the future, however they should be minimal as the plan for the site is for it to remain primitive.

Action: Vic moved and Mulligan seconded the motion that FWP proceed with the proposal to accept a public road access easement from Plum Creek Timber Company on four miles of road, and a recreational site easement from the Bureau of Indian Affairs, to provide public access to Hubbard Reservoir in perpetuity.

Discussion: Jerry Sorenson, Land Asset Manager of Plum Creek Timber, said this proposal still needs to go through the proper processes at Plum Creek before it can be finalized. He added that a maintenance agreement will need to be worked out between the three entities involved. He said there is no cost up front, however there will be maintenance issues to be worked out as time goes on. Details have not been worked out yet, but he does not anticipate any high expenses.

Action on Motion: Motion carried.

10. Cedar Creek In-Stream Flow Lease Renewal – Final. Glenn Phillips, FWP Fisheries Division Habitat Protection Bureau Chief, stated that Cedar Creek, a tributary to the Yellowstone River, is an important Cutthroat Trout spawning stream. FWP has an existing lease that was acquired in 1993 from the Forest Service. In 1995, DNRC authorized the change in use of the leased water rights to in-stream flow to allow more water during spawning and incubation periods. The lease expires September 20, 2005. There are no costs attached to this lease.

Mulligan inquired if there are any permanent leasing options, to which Phillips replied that statute mandates the ten-year lease. Hagener noted that this particular statute expires in 2007, and he added that discussions have already taken place within the agency regarding this issue, and it is likely that Commission approval will be sought for proposed legislation that would provide more permanent options.

Action: Mulligan moved and Workman seconded the motion to approve the water rights lease renewal agreement with the US Forest Service, and make application with DNRC to renew the temporary change to in-stream flow for a 10-year period. Motion carried.

11. Deep Creek Property Acquisition within the Smith River Corridor – Endorsement. Don Childress, FWP Wildlife Division Administrator, explained that the Parks Division of FWP was recently contacted by the Attorney General with an invitation to attend a meeting regarding the acquisition of this 240-acre parcel of privately owned land. Staff attended the meeting, which was facilitated by the Attorney General. The landowner expressed interest in negotiating a sale or transfer of the property to FWP.

This parcel is located in the Smith River corridor between the Parker Flat and Paradise boat camps in Cascade County. It encompasses land on both sides of the Smith River, as well as the mouth of Deep Creek. It is a rare opportunity to acquire property on the Smith River, and this parcel would provide important opportunities to the public.

Childress stated that a possible funding source would be the Smith River Corridor Enhancement Account, an account in which a portion of the Smith River fees are deposited specifically for the acquisition of additional sites. Additional sources include the federal Land and Water Conservation Fund, and Parks acquisitions funds.

Brenden asked for a ballpark figure for this purchase. Childress said a price has not yet been arrived at, that it is part of a discussion through Attorney General's office. Brenden inquired as to the Attorney General's involvement in this matter. Childress did not know specifically, but Hagener stated that the AG is a friend of the landowner who prefers to remain anonymous at this time.

Action: Doherty moved and Mulligan seconded the motion to proceed with negotiations with the landowner for acquisition of the Deep Creek property in the Smith River Corridor. Motion carried. Four in favor - one opposed (Brenden)

12. FWP Region 6 Facility Expansion in Glasgow – Endorsement. Don Childress, FWP Wildlife Division Administrator, explained that Region 6 Headquarters is looking for expansion opportunities to improve parking areas, for both the public and the Department, and to acquire storage areas. Region 6 is located on the smallest site of all the regions, with limited parking and insufficient storage space. There are two available vacant parcels of land adjacent to the present site that have no restrictions that would limit the proposed development. There is funding available in our capitol account to pursue this.

Action: Brenden moved and Colton seconded the motion to approve investigation of possibilities for expanding the Region 6 Headquarters area. Motion carried.

13. Mt. Haggin and Fleecer WMA – Duhamme Grant – Endorsement. Jeff Hagener, FWP Director, explained that the Duhamme property is located adjacent to the Mount Haggin and Fleecer WMAs. Greenway Service District of Butte has applied for this grant through the Natural Resource Damage Program, and the assumption is that it would be purchased and turned over to FWP for incorporation into the two WMAs if the grant is approved. It fits in well and has a great deal of support from the communities. FWP is asking for an endorsement to pursue this project.

Mulligan said the proposal includes money for fencing and weed control which has been an issue in the past when accepting these donations.

Action: Mulligan moved and Workman seconded the motion to approve proceeding with public review of acceptance of the Duhamme property if the grant funding is approved. Motion carried.

14. Block Management Program Update – Informational. Alan Charles, FWP Landowner Sportsman Coordinator, provided the Commissioners with a Program Report that details the program implementation, funding, and evaluation. He said the Block Management Program went into enrollment this year with no funding growth to maintain the 1,250 cooperators that enroll 8.5 million acres.

Charles said that enrollment is affected by a variety of reasons. For example, two landowners did not enroll due to FWP's involvement with wolves, five landowners sold their property, and one landowner did not enroll because he protests the elk hunting regulations in an entirely different area than his land is located in.

The program provides about 400,000 hunter days annually. Funding is provided through license fees (various sources), and is staffed with full time coordinators, seasonal staff, and part-time staff. Resources are allocated based on the regions' needs. Each region submits an annual management strategy and a request for funds to achieve that strategy. Cooperators are enrolled up to the funding available. Cooperators that have been in the program for several years and have proven stable may be enrolled for up to five years at a time. Landowners are eligible to receive up to \$10 per hunter day, and a \$250 annual enrollment payment.

A new revenue source is the inception of the Supertag where a hunter can buy chances on this tag, and the money is used for the block management program. The issue of access for hunters with disabilities has come up, however the program was found to be in compliance with the ADA. FWP encourages people with special needs to contact regional staff for guidance as to where they should go.

The program provides opportunities to everyone, while still allowing the landowners flexibility. Recent impacts on the program have been brought about by elk season extensions. Landowners are directly affected by these extensions and need to be consulted prior to granting season extensions that may affect their land.

Colton said there is subjectivity in the scoring process, and the applications for this program need to be evaluated as objectively as possible. He suggested that if a landowner has been reviewed and dropped, perhaps a representative from another region should review the application.

Mulligan said evaluations indicate that it is a successful program. It is his hope that the program isn't so successful that the public has been conditioned not to recognize the heritage of knocking on doors and getting to know the landowners. Expectations that FWP will do the legwork can lead to the public treating private property as if it were public ground.

Charles said at the end of the season, calls are made and audits are conducted. Colton stated that it is important to collect data at all levels to determine why we lose contracts.

15. Thompson River Conservation Easement (Plum Creek) / Bultman Land Exchange-Endorsement. Don Childress, FWP Wildlife Administrator, introduced Alan Wood, FWP Region 1 Wildlife Mitigation Coordinator, who explained that the Bultman Family and Plum Creek Timber Company are interested in a land exchange to clean up their property boundaries. Part of the Plum Creek lands are under a conservation easement as part of the Thompson Fisher conservation easement, which includes approximately 84,000 acres in the Thompson River drainage. The Bultmans would like to acquire that property, and Plum Creek would like to acquire the property outside the roads on the Bultman property. These two parties could execute this land swap without any action by FWP, however that would leave FWP with a conservation easement on property owned by the Bultman family that was designed for commercial industrial forest landowners. It would give Plum Creek land that would be prime for potential development as it is adjacent to public roads and surrounded by a conservation easement.

There is a clause in the conservation easement with Plum Creek that allows for land exchanges, however one of the terms of the easement limits Plum Creek to 35 land splits. Plum Creek can complete this particular split of ownership without using one of their authorized land splits if they place a conservation easement on the land they acquire.

What is proposed is that Plum Creek would acquire land from the Bultman Ranch and place it under the Thompson River Conservation Easement. The Bultmans would acquire land from Plum Creek that currently has an easement on it that permits public recreation through their Open Lands Policy, which allows two-weeks overnight camping in any given area, and allows unlimited year-round recreation. The Bultmans do not want that guarantee of public access within their ranch boundaries.

If the land exchange proceeds without FWP involvement, FWP would end up with a conservation easement that includes terms that are not applicable or appropriate to the private landowners. Plum Creek contracts with independent auditors to certify the resources are sustainable, while the Bultmans are unlikely to harvest timber.

If this land exchange culminates, FWP would acquire additional acreage in the Thompson River Valley. FWP would replace the existing conservation easement on that land, and would negotiate with the Bultman family to develop terms for the lands they would acquire that would be appropriate to their ranch. Public access would be lost, but the resource values on those properties would be maintained and would mesh with the Bultman's cattle operation.

Wood said he had met with local sportsmen's clubs and they expressed support for this proposal. A public comment period will be conducted as is customary.

Action: Workman moved and Colton seconded the motion to approve further negotiations with Plum Creek Timber and the Bultman family, and prepare an Environmental Assessment for public review. Motion carried.

16. Grant of Easement to MT Dept. of Transportation from Ninepipe WMA near Ronan – Final. Don Childress, FWP Wildlife Administrator, explained this proposal. The Montana Department of Transportation negotiated with FWP in 1973 for the 3-acre easement in the Ninepipe WMA where they are currently reside. They now are requesting an additional 3.05-acre parcel in the WMA so they can expand their abatement shop facilities. FWP and MDT worked together to identify acreage with the least impact to the WMA, and it is contiguous to their existing 3-acre site.

Childress said there is funding in place from the sale of a Fishing Access Site and from monies obligated from MDT. This proposal would be specified as an easement so the land will revert back to FWP if MDT abandons use.

Action: Workman moved and Colton seconded the motion to grant the Montana Department of Transportation a 3.05-acre easement at Ninepipe Wildlife Management Area as proposed. Motion carried.

17. Swan Valley Conservation Easement – Endorsement. Alan Wood, FWP Region 1 Wildlife Mitigation Coordinator, explained that this proposal is for a conservation easement on Plum Creek lands east of Highway 82 in the Swan Valley, within the Swan River State Forest. The preliminary appraisal process has been completed, and Plum Creek has now decided there are some sections of land involved in the original conservation easement negotiations that they would rather not have encumbered by easement, but are willing to sell as fee title. Public meetings and hearings will be conducted, and a public comment period will be offered.

The intent is to finalize the appraisal, and then release an environmental assessment for public comment in October. The preliminary easement came in at \$1,150 per acre for the conservation easement. The easement will be close to full fee purchase price. Three options will be proposed: 1) the conservation easement only, 2) the fee purchase only, or 3) a combination of both.

FWP has been granted six million dollars through the US Forest Service Forest Legacy Program to purchase the 7,200 acre conservation easement. The Trust for Public Lands is an integral partner in that they have provided two million dollars in private matching funds for the federal matching dollars. Congress just passed a budget that included 2.8 million dollars for the potential fee acquisition of some of those lands. FWP has requested additional dollars to purchase three additional sections next year. Because the money comes in increments, FWP proposes to phase in the acquisitions as the money becomes available. Because the land is checkerboarded with state forest lands, DNRC is interested in, and supportive of, this project, and would be willing to own or manage the property. Preliminary discussions have been held, but continued discussions are necessary.

Action: Workman moved and Mulligan seconded the motion to give FWP permission to include the proposed fee purchase in the Swan Valley project as they move forward with the public involvement and environmental review process.

Discussion on Motion: Mulligan questioned the risk of prices rising on the land as it is phased in. Wood replied that prices will undoubtedly rise as lands are phased in due to the rising appreciation value of land in the Swan Valley. Mulligan then asked if Wood had a sense of whether the money would be available when the land goes up in price, to which Wood said the Department runs a risk on that.

Action on Motion: Four in favor – one opposed (Brenden). Motion carried.

18. Blue-Eyed Nellie WMA - Acquisition of Long and Ternes Properties – Final. Don Childress, FWP Wildlife Division Administrator, explained this proposed acquisition of 97-acres from John Long, and 1-acre from Wayne Ternes, is for land located near the Blue Eyed Nellie WMA west of Anaconda. The Long parcel consists of a large open grassland flat that is used by Bighorn Sheep. An adjacent landowner, Wayne Ternes, has a small 1-acre site that he has offered to donate to the department. Long offered FWP the first opportunity to purchase this tract. If the Department does not pursue this opportunity, the Longs will subdivide the land for residential development. Funds for purchase would come from a source specifically designated for sheep. There has been no opposition to the proposal. Sportsmens groups highly support the proposal. Childress said there are weed management issues that will need to be dealt with, and to that end, FWP already has a weed plan, and would work with the local weed board as well.

Action: Tim moved and Workman seconded the motion to approve acquisition of approximately 97 acres from John and Joanne Long, and further approve acceptance of the donation of approximately one acre from the Wayne Ternes family.

Discussion: Doug Driesen, MT Chapter for North American Wild Sheep, stated their chapter strongly supports the purchase of these properties, and they have pledged \$25,000 to the project. It is a viable winter range and provides a corridor for the sheep. If this is not purchased, it could end up in a development situation.

Action on Motion: Motion carried.

19. CSKT Waterfowl Regulations – Final. Don Childress, FWP Wildlife Division Administrator, explained that the proposed regulations are in their Commission packets. The agreement between the State of Montana and the Confederated Salish Kootenai tribe provides for the joint approval of hunting regulations for upland birds and waterfowl on the reservation. The Commission considers the regulations after the Tribes consider them. The proposed waterfowl regulations have been approved by the CSKT Council, who now ask for concurrence from the Commission on adoption.

Action: Workman moved and Mulligan seconded the motion to approve adoption of the proposed waterfowl regulations as submitted from the CSKT Council. Minor differences in state and tribal regulations have not been an issue in the past. Motion carried.

20. 2005-2006 Bison Hunting Regulations – Final. Pat Flowers, FWP Region 3 Supervisor, stated that the Department received 299 comments following the approval of the tentative season proposal. They were similar to the comments received earlier. Flowers explained that the final regulations propose one amendment to the tentatives, which is to require all permitted hunters to attend a hunting orientation session. Successful applicants would need to call the regional office to schedule the orientation. The drawing will be held the second week of October.

Topics to be covered in the orientation would include:

The history of bison management with license holders (will assist with media contacts)

The role of bison hunters in addition to the sport

Review of regulations

Preparation for the hunt and equipment needed

Shot placement

Spotter and the value of the spotter to determine which animal was hit

How to deal with protestors

Hunter harassment law

How to behave and represent the sportsmen community

Retrieval

Waste of game concerns

Opportunities for outfitter assistance

Aspects of hunting next to YNP

Safety zones in Gardiner area (in place with elk hunt as well)

The process for drawing blood samples for Brucellosis testing

A video of past hunts

Hunter safety with respect to other bison

Workman asked why the orientation information could not be mailed or located on the FWP website, and why it could not be *requested* rather than *required*. Flowers said that had been considered, but FWP received several comments stating they felt strongly that an orientation was necessary and appropriate, and is more effective when done face to face. FWP's recommendation, based on comments, is to take a more aggressive approach. The desire is for a successful hunt to occur and FWP feels this is the way to make it happen. Orientation would be available at any of the regional offices.

Colton said hunters have an enormous responsibility to portray the proper perception of bison hunting. They will be the standard bearers of harvest. There will be seasoned hunters, but there will also be new hunters, and they all need to understand the responsibility of the hunter, and of the future of the buffalo. Workman said the same thing can be accomplished via the Internet. He feels it is unreasonable to sit down with FWP staff for orientation.

Brenden agreed with Workman. He asked if other states practice this. He said FWP is trying to placate others, and asked why Montana needs to be so politically correct and afraid of what happens in Montana. Other states just go about their business.

Flowers replied that Alaska requires orientation in one of their hunt areas, and Wyoming also requires an orientation, face to face. Hagener stated that several other states require an orientation session before they even issue the licenses.

Mulligan said this cannot be viewed as a normal hunt. It would be an injustice not to require the orientation. To equate it with other hunting experiences on private ground is of no value – it is not equal. The primary importance of this hunt this year is to make it successful toward the long-term hunting of bison.

Doherty asked for public comment.

Jay Bodner, MT Stockgrowers Association, said they are supportive of the process. Their concern with the hunt is the disease issues relative to the livestock industry. Their concerns have been addressed in this proposal. He stated they approve of the Interagency Plan and feel it is important to support it. There will be a coordinated effort with Department of Livestock.

Colton asked Bodner if the Stockgrowers had an opinion on the orientation rules, particularly related to brucellosis blood drawing. Bodner said there is no specific policy with that, but the more information done correctly is of benefit to everyone.

Tom Jones, Sr. Warden, Fort Belknap Reservation, stated he strongly supports the orientation process. The Tribe has 1,000 buffalo on the reservation, and they have had hunts for ten years, outside of the public eye. He knows what can happen. His concern regards the types of weapons used to kill buffalo. He has seen them shot forty-five times – the bison get up and run and have to be shot again and again. He fully supports the orientation – especially relative to the public's eye.

Action: Workman moved and Brenden seconded the motion to change the wording in the orientation paragraph to read “all permitted hunters will be requested and highly advised to participate in the hunt orientation with FWP staff. Should hunters be unable or unwilling to participate, orientation information shall be available via mail and/or Internet access”.

Discussion: Workman said “enough regulation is enough regulation” regarding the orientation. He said this is contrary to how Montana does business. He said there are hunters across the state that can read, if they need to. He said it is insulting to have to go to school before they hunt. He said he agrees with it as an opportunity but not as a requirement.

Colton said he is worried about the future of the hunt. He referred to Mr. Jones, an expert in harvesting bison, who urged the mandatory orientation. If only one person benefits from the orientation, he is in favor of it. This is an opportunity to learn. This is a totally different situation as far as how Montana does things.

Colton asked Jim Kropp to comment. Kropp said FWP has experience in hunting bison. FWP and Department of Livestock has been present when many have been killed. An orientation was conducted in the field during the mid 1980's and early 1990's. Discussions at these sessions included shot placement, and what happens should a wounded bison enter the Park. Yellowstone Park has zero tolerance for hunting, they would not allow retrieval of the bison, therefore that bison would remain in the Park in a nasty situation. A bison will spoil in a cooler if it is not properly prepared *immediately*. It is a serious matter to properly take care of them. This situation is a lot different than hunting in West Yellowstone in three feet of snow, as opposed to hunting in Gardiner when there is little or no snow. Kropp said dealing with the press is imminent. National media will arrive with modern equipment can capture conversations a mile away. It is important to prepare hunters for the possibility of media being in their faces. Orientation done over the Internet or by mail is questionable - hunters need to know all of the above listed information prior to arriving on-site.

Workman said the season is spread over a longer length of time and the media will not stick around for three months. If protestors show up, they will not stick around for three months. This should not be part of the equation.

Colton said it is important to talk face to face with hunters regarding instruction on doing the blood drawings. If they are done improperly, the results are invalid.

Action on Motion: Motion failed. Two in favor (Workman and Brenden) – three opposed.

Action: Colton moved to approve the hunt for 50 bison as proposed by the Department for the hunt alone, not the orientation portion. Motion withdrawn.

Action: Colton moved to go forward with the hunt as proposed by the Department including the mandatory orientation. Workman seconded.

Discussion: Brenden said that he had read that Wyoming is proposing to kill 450 bison, and they have the same problems as Montana, but they seem to know how to take care of the problem. He thinks Montana needs a buffalo hunt, and feels the present quota falls short by 500-1,000 head, but at least this proposal is a start.

Mulligan agreed that extending the season will help somewhat in preventing conflicts. He feels Montana has too many bison tags, and he said this hunt is considerably different than the Wyoming hunt. Mulligan fully supports bison hunting, but it is important to make this hunt successful for future hunts. He said there are two scenarios that could occur. One is if during the early hunt only a very few bison come out in the West Yellowstone area, then there will be 25 unhappy hunters. The other is when the weather pattern forces a significant number out, forcing Department of Livestock to haze them. He also fears the hunters will be shooting the bison close to the Park, which isn't a good thing. In essence, with this many tags, this will force the participants into lack of fair chase. He said he fears 25 tags in each time period is too many tags and will cause grief, and sink the opportunity for the long-term hunt. He hopes he is wrong but he feels this is the case.

Doherty said one of the first and nastiest fights he was involved in while in legislature was the buffalo hunt. He is a lifelong hunter, but voted against it because of the bad name it will give hunting. Since he has been a Commissioner, he has been worried about this hunt. He said the orientation gives respect to the bison and for the hunting tradition. Bison and whitetail were nearly wiped out at one time, but hunters worked toward their restoration. Success stories need to be promoted. It is imperative that this hunt be successful and he feels the orientation plan increases the likelihood that it will be a success. Treat this animal as a wild game animal.

Action on Motion: Motion carried. Four in favor – one opposed (Mulligan).

21. Public Opportunity to Address Issues Not Discussed at this Meeting. There was none.

Action: Colton moved and Workman seconded the motion to adjourn. Motion carried.

Meeting adjourned at 12:20 p.m.

Steve Doherty, Chairman

M. Jeff Hagener, Director